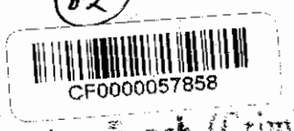
CrA 1624 /93

(82)

XII-189 (Jail) C. J. P. R./I-91



APPEAL OF PRISONER

No. 1228/94 Name પ્રેમસિંહ

Father's name ગલદેવ માંગુ આકેત રહેવાસી આમા ખાતા ખરવાડી

Residence [illegible] Age 25 વર્ષ SI NO. 246/93

Sentenced to આજીવન કારાવાસ on 23/9/1994

Under Section 302 આઈ.પી.સી. by એડીશનલ અપર સત્ર ન્યાયાધીશ રામગઢ (અ.જ.)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all. if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 23/9/94

2 Date on which copy received 15/10/94

3 Date on which Appeal sent /10/94

4 Whether the prisoner wishes to be represented or ~~not~~. Yes.

No. 1228/94 Name પ્રેમસિંહ અને ગલદેવ માંગી

Confined in કેન્દ્રીય Jail રામગઢ (અ.જ.)

No. 843 /Law/ Dated 1994. 20/10/94

Forwarded to the અતિરિક્ત પેનીયમ સેશન્સ ઉચ્ચ ન્યાયાલય અલવર (અ.જ.)
to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent
કેન્દ્રીય જેલ રામગઢ (અ.જ.)

Date of receipt in Office

Date of receipt of record to accompany the

Memo of Appeal to the Appellate court

No. Dated / 199

Forwarded to the

Date of receipt in Appellate court

[P. T. O.]

(16)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cri. A. No. 1624/94 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. : HON'BLE SHRI LAL CHAND BHADOO, J. AND HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J.

7-12-2005

Mrs. Kiran Jain, counsel for the accused/appellant. Mr. G.K.Beriwal, Deputy Advocate General with Mr. Ravindra Agrawal, Panel Lawyer for the respondent/State.

Heard.

ORAL JUDGMENT

1. The accused/appellant Premsingh has preferred this appeal through Superintendent, Central Jail, Raipur questioning the legality of judgment of conviction and order of sentence dated 23-9-1994 passed by learned IInd Additional Sessions Judge, Raigarh, in Sessions Trial No.246/93, whereby the learned Additional Sessions Judge, after holding the accused/appellant Premsingh guilty for commission of the offence punishable under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life, and convicted the other accused persons namely Dharamsingh, Nanhooram and Rambharos under Section 326 read with Section 34 of the Indian Penal Code and sentenced each of them to undergo rigorous imprisonment for 1 year and 47

(पीछे देखिये)

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आदेश पत्रक

मामला क्रमांक Cri. A. No. 1624/94 सन् 200

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

days and also to pay a fine of Rs.200/-, in default of payment of fine, to undergo simple imprisonment for 15 days.

2. The case of the prosecution, in brief, is that, Kunjobai, the wife of the deceased Hiraram, lodged a report in the Police Station, Gharghoda to the effect that, on 7-8-1993, at about 8 to 9 P.M., she, along with her husband Hiraram, was sleeping in their house. The accused persons Premsingh, Dharamsingh, Nanhooram and Rambharos came to their house. Premsingh dragged Hiraram out of the house. She tried to intervene but the accused Dharamsingh assaulted her with a lathi. Rambharos and Dharamsingh caught hold of her husband Hiraram and beat him with the fist. Premsingh attacked with an iron knife and Nanhooram with a lathi, as a result of which, Hiraram fell down. Kunjobai started crying. Hearing her cries, Sadhram came on the scene of occurrence, but the accused persons ran away therefrom. Kunjobai called Mangalsingh, Panchram and Deonath and apprised them about the incident. Hiraram was alive at that time and was talking. He disclosed about the incident to Sadhram, Panchram, Mangalsingh and Deonath and he died at about 4 A.M. The Investigating Officer, after registering the F.I.R., Ex.P-21, took-up the investigation and prepared panchnama of the dead body under Ex.P-4. The plain soil and the blood stained soil were taken into possession from the place of the occurrence under Ex.P-5.

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..... **विरुद्ध** .....

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The accused/appellant Premsingh gave memorandum Ex.P-6 about the place where the iron knife was kept, and in ~~presence~~ pursuance of that, he got recovered the iron knife under Ex.P-7. The clothe of the accused/appellant Premsingh was taken into possession under Ex.P-8. The accused Nanhooram gave memorandum Ex.P-9 about the lathi and the same was recovered under Ex.P-10. The site-plan, Ex.P-14 was prepared and the dead body was sent for post mortem examination. The post mortem was conducted by P.W.-8, Dr. N.C.Roy, Assistant Surgeon, Primary Health Centre, Gharghoda and post mortem report was prepared by him under Ex.P-17. After completion of the investigation, a charge-sheet was filed in the Court of Judicial Magistrate First Class, Gharghoda, who committed the case to Sessions Judge, Raigarh for trial, wherefrom the learned IInd Additional Sessions Judge received the case on transfer for trial.

3. The prosecution, in order to prove the offence against the accused persons, examined 9 persons. Statement of the accused persons were recorded under Section 313 of the Code of Criminal Procedure, in which, they denied the prosecution evidence, pleaded innocent and said that they have been falsely implicated in the crime.

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मामला क्रमांक ..... **सन्** **200**

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..... **विरुद्ध** .....

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4. The learned Additional Sessions Judge, after hearing the argument of learned counsel for both the parties, convicted and sentenced the accused/appellant Premsingh along with other accused persons in the manner as mentioned in the earlier part of this judgment.

5. We have heard learned counsel for both the parties. The fact of the death of Hiraram, as homicidal in nature, has not been disputed by the learned counsel for the accused/appellant Premsingh, apart from the evidence of P.W.-8, Dr.N.C.Roy, who conducted the post mortem on the body of Hiraram. The cause of death of Hiraram was shock due to the internal injuries of lung and heart and was homicidal in nature. Therefore, it is established that, the death of Hiraram was homicidal in nature on account of injuries No.3 and 5, which were piercing the tissues of lung and heart.

6. So far as the question of involvement of the accused/appellant Premsingh in committing the murder of Hiraram is concerned, the star witness i.e. the wife of the deceased namely Kunjobai, who lodged the report at Police Station Gharghoda, has not been examined by the prosecution. The two witnesses namely Sadhram, P.W.-1 and Panchram, P.W.-2 have

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

been examined and they have clearly stated that they were not present at the scene of occurrence at the time of the incident. They were called by the wife of the deceased Kunjobai and she had apprised them about the incident. As has been mentioned above, the wife of the deceased Kunjobai has not been examined. Sadhram, P.W.-1 has turned hostile and he has not supported the case of the prosecution. He has said that, he went to the house of the deceased Hiraram, where his body was lying. In para 8 of his deposition, he has clearly stated that, he was not present at the scene of occurrence. He went to the house of the deceased Hiraram when he was called, and when he reached, Hiraram was not able to talk and he did not disclose anything to him. Therefore, the evidence of this witness is of no help for the prosecution. The other witness P.W.-2, Panchram, in para 3 of his evidence, has stated that, Hiraram disclosed him that, Premsingh, Dharamsingh, Nanhooram and Rambharos have assaulted him. He also disclosed that, Premsingh had attacked him with a knife and other accused persons have also attacked him. In the cross-examination, in para 5, this witness turned hostile and stated that, he has not seen the incident. When he reached the house of the deceased Hiraram, Hiraram was lying in flat condition and he was not able to talk, he was unconscious and he did not disclose anything. On the question put by the Court that, which part of the statement is correct, then he said that, he has forgotten what

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Hiraram had told him. In para 7, he said that, it is incorrect that Hiraram had not told him anything. He was his uncle in relation. Merely on the wavering evidence of this witness, it cannot be held that, the accused/appellant Premsingh was the author of the injuries caused to Hiraram because in the first instance he has stated that Hiraram had made oral dying declaration before him, again he said that no dying declaration was made and Hiraram was not able to talk, then again he said that Hiraram disclosed to him. Therefore, the evidence of P.W.-2, Panchram has to be scrutinised with the aid of the other evidence. P.W.-1, Sadhram, who reached on the scene of occurrence, has clearly stated that, Hiraram was not in a position to speak and he did not disclose anything to him. Therefore, in view of the evidence of P.W.-1, Sadhram, reliance cannot be placed on the evidence of P.W.-2, Panchram. Moreover, Dr.N.C.Roy, P.W.-8, who conducted the post mortem, has stated in para 9 of his evidence that, the deceased must have been died immediately due to injuries No.3 and 5, which were at his lung and heart. Therefore, in view of this medical evidence, there was no chance that Hiraram was alive, and as such, for the foregoing reasons, reliance cannot be placed on the evidence of P.W.-2, Panchram that Hiraram made any dying declaration before him. Even though the knife has been recovered at the instance of the accused/appellant Premsingh, but there is no serologist report about the blood found on the knife and,

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therefore, merely on the ground of recovery of the knife, without any serologist report, the accused/appellant Premsingh cannot be connected with the crime in question.

7. We are of the considered opinion that, the finding of the trial Court, convicting the accused/appellant Premsingh for committing the murder of Hiraram, cannot be sustained for the foregoing reasons.

8. In the result, the appeal succeeds and is allowed. The conviction and sentence awarded to the accused/appellant Premsingh under Section 302 of the Indian Penal Code are set aside and the accused/appellant Premsingh is acquitted of the charge of Section 302 of the Indian Penal Code. He be set at liberty forthwith, if not required in any other crime.

Sd/-
L.C.BHADOO
Judge

Sd/-
V.K.Shrivastava
Judge

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